

Current Issues in Search & Seizure

Education Conference 2016

“What do you mean I’ve been reversed?”

Presenters:

Hon. Michele M. Pitman
(Cook)

Hon. Craig H. DeArmond
(5th Circuit)

AOIC Training Manager – Julie
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Topics To Cover

- K-9 searches
- Cell phone searches
- Terry stops
- Search warrants/Anticipatory warrants
- Vehicle searches
- DUI blood samples

Topics cont'd

- The "Good Faith" Exception
- Attenuation

NOTE: Answer slides & Citations will be provided

Our Format

- Scenarios
- Group Discussion
- TurningPoint Questions
- Group Problem Solving

OUR GOAL

- Recognize some common problems with search & seizure pre-trial motions
- Identify & discuss current 4th Amendment issues
- Look at some reasons for reversal
- Reduce stress in ruling on suppression issues



Why We're Here

The "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated."

K9 Searches

"Drug detection dogs are highly trained tools of law enforcement, geared to respond in distinctive ways to specific scents so as to convey clear and reliable information to their human counterparts."

Florida v. Harris, 568 U.S. ___, 133 S. Ct. 1050 (2013)



K9 Searches- Scenario

- Police surveillance on apartment due to general complaint re: unspecified narcotics activity in unit 1F (no name or description of occupant)
- Deft seen exiting 1F, followed, traffic stop due to known suspended license, pills in door handle seen in plain view

K9 Searches- Scenario

- Deft arrested, officers learn Deft rents 1F, came back with drug dog, entered front door common area for 4 apts (normally locked)
- K9 alerts on 1F front & back doors, police obtain search warrant & execution nets drugs & gun

K9 Searches- Scenario

What are some of the relevant facts?

- Deft seen leaving 1F & found with drugs
- K9 is taken to common area for 4 apartments
- K9 alerts on both front & back doors

K9 Searches

How do you determine the reliability of a K9's "hit" in order to find it is sufficient for probable cause?

By means of a probable cause hearing focusing on the dog's alert. *Florida v. Harris*, 133 S. Ct. 1050 (2013)

Florida v. Harris

"If a bona fide organization has certified a dog after testing his reliability in a controlled setting, a court can presume (subject to any conflicting evidence offered) that the dog's alert provides probable cause to search."

133 S. Ct. 1050, 1057

K9 Search-Probable Cause

Harris: focusing on “field results” alone, or creating rigid rules or “bright-line” tests is not proper way to assess the reliability of a drug dog’s alert.

- Court considers “totality of circumstances” with focus on results in a controlled environment.

When K9 drug dogs go bad



K9 Searches

But what about the K9 being in the common area accessing front doors of 4 apartments?

P. v. Brown, 2015 IL App (1st) 140093 found w/o comment, search was w/in “curtilage”.

Without more, they said *Jardines* applied.

K9 Searches

What constitutes "curtilage"?

-In *Jardines* it was the front porch of his home.

- *Brown* is saying that a locked common entrance to a multi-apartment building is the same as the front porch.

K9 Searches

OK, so what about the "good faith" exception to the exclusionary rule?

Let's assume at the time of the search *Jardines* had not been decided. Could officers rely on their good faith belief the K9 sniff was sufficient?

"Good Faith"

The exclusionary rule does not bar evidence obtained by a police officer who reasonably relies, in objective good faith, on a search warrant issued by a neutral magistrate but that is later found to be unsupported by probable cause.

U.S. v. Leon, 468 U.S. 897 (1984)

“Good Faith”

Extended by *Davis v. U.S.*, 131 S. Ct. 2419 (2011) to include good faith reliance on binding appellate precedent that specifically authorizes a particular police practice.

Question:

Could officers rely on previously decided warrantless dog-sniff cases in “good faith”?

1st District says “no” in *Brown*. Even if IL adopted *Davis* extension of “good faith”, no prior cases allowing warrantless dog sniffs “in curtilage”.

Traffic Stop-Time of Mission

Change facts slightly – at traffic stop, no suspended license, simple traffic violation. Officer runs license – OK, issued citation then asks if he can run his K9 around car.

Driver refuses, wait for backup, time between issuance of ticket & “hit” = 7 – 8 minutes.



Traffic Stop-Time of Mission

Illinois v. Caballes (2005): a K9 sniff conducted during a lawful traffic stop does not violate the 4th Amendment proscription of unreasonable seizures. S.Ct. found it lawful "so long as [unrelated] inquiries do not measurably extend the duration of the stop."

Traffic Stop-Time of Mission

The S. Ct. giveth, the S. Ct. taketh away:

Once the traffic stop's mission is completed (including checks for ID, warrants & status of license) a drug sniff executed thereafter changes the focus of the mission.

Altho in *Caballes*, they said it didn't.

Cell Phone Searches



Cell Phone Searches Scenario

Traffic stop – arrest for weapons – cell phone seized

Police access phone – gang info.

Deft charged from photos & videos – gang shooting, enhancing sentence

M/Suppress – reasonable expectation

State – search incident to arrest

Cell Phone Searches

Now assume: Deft arrested – drug sale

- At station, phone getting calls – “My home”

- Check phone’s call log, number for “My home”

- Trace number to address, see same woman as on phone

- Deft’s name on mailbox

Cell Phone Searches

Obtain search warrant – seize drugs, gun & money.

Deft's M/Suppress – search of phone unreasonable

State – search incident & evidence subject to destruction

Terry Stops



Terry Stops- Scenario

1st call: suspicious people loitering; 2nd call: several male Hispanics; 1 with gun
Officers approach – youths flee – chase
Deft seen, eye contact, turns & walks away

Ignores repeated commands to stop
Off. stops him, grabs arm, "protective" pat-down

Terry Stops

During pat-down, feels butt of gun - arrest
Deft's M/Suppress:

- 1) no basis for *Terry* stop – no articulable facts to reasonably suspect;
- 2) if stop proper, no reasonable fear for officer safety for pat-down.

Terry Stops – Table Discussion

Question:

- 1) Was stop proper?
- 2) Was pat-down justified?

Terry Stops

What are some of the relevant facts?

- Suspicious people loitering in area
- Described as male Hispanic youths
- Mention of 1 with gun
- As officers approach, group scatters
- When Deft makes eye-contact, turns & walks away
- Repeated directions to stop ignored

Terry Stop/Vehicle Search

Change facts: Traffic stop – vehicle running while blocking entrance to motel parking lot

Officers approach – plain view – large handgun round in bag in console

Deft & 2 pass. ordered out, handcuffed all

Recover bag w/ 5 rounds

Pat-down everyone

Terry Stop/Vehicle Search

Pat-down of Deft/Driver – same type bullet

Search of vehicle – revolver of same caliber

M/Suppress: pat-down & search unreasonable, possession of 1 bullet not enough for “reasonable suspicion” w/out questioning re: FOID card

Terry Stop/Vehicle Search – Table Discussion

Question: Was there enough for *Terry* stop?

Was there sufficient basis for removal of Deft & passengers from car?

Was there sufficient probable cause for search?

Terry Stop/Vehicle Search

Enough for stop? Yes.

- Brief investigatory stop
- Totality of circumstances
- Reasonably lead to conclusion

Terry Stop/Vehicle Search

How about removal from car?

Yes, *Terry* "pat-down" of passenger compartment during investigatory stop justified. *Michigan v. Long*, 463 U.S. 1032 (1983)

- Pat-down limited to area where weapon may be

Terry Stop/Vehicle Search

Bullet observed inside car may reasonably indicate presence of weapon. *People v. Stack*, 244 Ill.App.3d 393 (4th Dist. 1993)

Handcuffing didn't turn it into an arrest either.

People v. Colyar, 2013 IL 111835

Terry Stop/Vehicle Search

So what about the search?

Not based on probable cause;
doesn't have to be

– reasonable suspicion of presence
of weapon & possible threat to safety
is enough under *Terry* stop.

Search Warrants



Anticipatory Search Warrants-Scenario

Drug task force intercepts Fed Ex package.

Addressee: S. Harris; K-9 alert – search warrant – 1,350.5 g cannabis in 4 heat-sealed bundles.

Anticipatory search warrant (ASW) & order for electronic monitoring & breakaway filament tracking device.

Anticipatory Search Warrants

Warrant to search: "S. Harris or anyone taking possession" & enter & search address on package "or any premises or vehicle" parcel brought into once delivered.

Complaint: ASW "will only be executed if [parcel] is *accepted* into a location or vehicle"

Anticipatory Search Warrants

Delivered to address (Deft's grandmother's house) – left on porch – 1 hr later, Deft A. Harris arrives alone, car running, picks up package, puts in rear seat & stopped as backing out of driveway.

Device not monitored, no signal package opened. Deft arrested.

Anticipatory Search Warrants

M/Suppress: No probable cause w/out the "triggering event" of opening package.

Deft says:

Police acted too soon, therefore, his arrest & search was w/out probable cause

Anticipatory Search Warrants

"The purpose of defining a triggering event in an anticipatory warrant is to ensure that officers serve an 'almost ministerial' role in deciding when to execute the warrant."

- Doesn't have to be reflected on warrant
- Must be narrowly drawn to avoid manipulation or misunderstanding

Warrantless Entry

Changing the facts: Informant enters residence to make controlled buy;

Not known whether drugs there until inside; Informant signals drugs there;

Contacts drug agents who enter w/out warrant.

Warrantless Entry

M/Suppress: No warrant, no evidence.

State: "exigent circumstances"; no P/C prior to entry, but once he saw drugs, there was.

Warrantless Entry

Origin in federal cases (*U.S. v. Paul*, (7th Cir. 1986) 808 F.2d 645; *U.S. v. Janik*, (7th Cir. 1983) 723 F.2d 537)

“when one invites undercover agent into his home, agent can summon other agents to assist in arrest” w/out violating 4th amendment.

Consent-once-removed

3 necessary elements:

- 1) U/C agent or C/S enters at express invitation of person w/ authority
 - 2) establishes P/C for arrest or search at that point
 - 3) Immediately summons other officers
- U. S. v. Diaz*, 814 F.2d 454 (7th Cir. 1987)

Consent-once-removed

Recently approved in *People v. Concha*, 2014 IL App (1st) 122323-U; not yet settled by State or US Supreme Courts.

DUI



DUI - Scenario

Deft involved in auto accident causing death.

Within 2 hrs, Deft in custody, ISP trooper transported to hospital for blood & urine draws.

No signs of impairment & no consent

Deft's license not suspended or revoked

DUI - Scenario

No search warrant; Deft issued 3 tickets:

Failure to Reduce Speed; Operating w/out Insurance; Operating w/out valid registration

Lab results: .18 BAC & cocaine

New charges: Reckless Homicide & Agg. DUI

Special Needs

Change the facts:

Trooper didn't seek chemical testing until 2 days after fatal accident?

M/Suppress: police needed search warrant

State: **11-501.6(a)** provides for "special needs" exception

Thank you

Please complete your evaluations, return your Turning Point cards, pick up your Answers

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NOTE TO PARTICIPANTS: Please read these scenarios in preparation for the class. Your participation is encouraged and we believe you will find the discussion much more interesting and will be able to contribute more by having read them in advance.

Scenario #1 – K-9 Searches

Police officers were conducting surveillance on a particular unit in an apartment building in response to a general complaint about unspecified narcotics activity in unit 1F, with no description or name of the individual involved.

One officer observes the Defendant exit the apartment from a rear door connected only to that apartment, get into a tan vehicle and drive away. While running a license check on the vehicle, he learns the vehicle is registered to the Defendant & his license is suspended.

Activating his emergency lights, the officer effectuates a traffic stop. While standing outside the vehicle talking to the Defendant, the officer observes three pills in a plastic bag, in the handle of the driver’s door which he suspects are ecstasy. The Defendant is taken into custody & the officer learns from the property manager of the apartment building that 1F is rented to the Defendant.

The officer returns to the apartment later that evening with another officer and his certified K-9. They enter the common area for the 4 apartments which normally requires a key to enter, but was not closed completely when they arrive, so they are able to gain access to the common area. The only other door is the back door which enters only apartment 1F. The K-9 alerts on both doors, so the officer returns to the station, prepares a search warrant, gets it approved by an ASA and takes it to a judge for issuance.

Scenario #2 – Traffic Stop; Time of Mission

A police K-9 officer stops a vehicle for a minor traffic violation late at night in a rural setting. There are two people in the vehicle and after obtaining the driver’s license, registration and proof of insurance, the officer asks the driver to accompany him to the squad car, but he refuses. After running a records check on the driver, the officer asks the passenger for his ID as well. Both checks turn up nothing and the officer calls for a back-up and begins writing a warning ticket for the driver.

He returns to the stopped vehicle, issues the warning, explains the ticket and gave the occupants their papers; completing his work with the traffic stop. His request to walk his K-9 around the vehicle is denied so he instructs the driver to shut off the car, exit and stand in front of the patrol car to await arrival of the back-up. Another officer arrives and the K-9 is removed and walked around the vehicle.

The dog alerts on the vehicle halfway through the second pass. A total of 7-8 minutes elapsed from the time the ticket was issued until the K-9 alerted. A search of the vehicle reveals a large bag of methamphetamine.

Scenario #3 – Cell Phone Searches

Police effected a traffic stop of the Defendant which led to his arrest for a weapons charge. During a search of the Defendant incident to arrest, a cell phone was taken from his pants pocket. The officer accessed the information on the phone and discovered repeated references to street gang terminology. At the station several hours later, a gang-crimes investigator looked at the information in the phone. Based on photographs and videos contained in the phone, the Defendant is charged with a shooting incident and an enhanced sentence is sought based on the gang membership.

The Defendant moves to suppress the evidence taken from his phone claiming he has a reasonable expectation of privacy in the contents. The State counters with the argument that the search was incident to arrest.

Scenario #4 – Cell Phone Searches

The Defendant is arrested after police see an apparent drug sale. At the station, they seize two cell phones from him; one being a flip phone, and notice it was receiving multiple calls from a source identified on the external screen only as “my house”. They open the phone and observed a picture of woman & baby as the phones wallpaper. After accessing the call log they found the number associated with “my home”. They then traced that number to a residence they suspected was the Defendant’s.

At the residence, they saw the Defendant’s name on the mailbox and could see a woman through the window who resembled the woman in the photo. They secured the apartment and based on this information they obtained a search warrant. During the search they found 215 grams of crack cocaine, marijuana, drug paraphernalia, a firearm, ammunition and cash.

The Defendant moved to suppress the evidence obtained during the search, contending it was fruit of an unconstitutional search of his phone. The State contended the search was incident to arrest and there were exigent circumstances in that information on the phone was subject to being remotely deleted; thereby destroying evidence.

Scenario #5 – Terry Stops

Officers received a call while on patrol in a marked squad about suspicious people loitering nearby. As they circled the block to approach the group, they receive another call indicating there were several male Hispanic juveniles loitering in the area and one of them had a gun.

As the officers approached the area, the group of Hispanic juveniles broke up and fled in different directions. One officer gave chase on foot while the other pursued in the squad.

The Defendant was stopped by the officer on foot when he was seen coming from a doorway leading to the alley the officer was entering. The Defendant made eye contact with the officer at which time the officer told him to stop. The Defendant turned and started walking in the opposite direction, ignoring the officers shouted commands to stop.

When the officer caught up with the Defendant he grabbed the Defendant by the arm and conducted what he referred to as a "protective" pat-down search, due to the nature of the call. While doing so, he felt what he believed to be the butt of a gun, removed the gun from the Defendant's waistband and arrested the Defendant.

The Defendant moves to suppress, contending: (1) there are no articulable facts leading the officer to reasonably suspect he had committed or was committing a crime; and (2) even if the investigatory stop was proper, there was no basis for a pat-down search.

Scenario #6 – Terry Stop-Vehicle Search

During the early evening hours, police in an unmarked squad were on routine patrol of an area they routinely check for "parties and stuff of that nature" involving minors. They saw the Defendant's vehicle parked in the entrance to a motel parking lot, with the engine running. When he did not move after a period of time the officer and his detective partner approached the vehicle on foot.

As they approached they were able to see the Defendant seated in the driver's seat, a front seat passenger and a third person who exited the motel, walked to Defendant's vehicle and entered the rear passenger area.

After they approached from each side of the vehicle, one asked the driver why he was blocking the entrance. The Defendant responded that he was waiting to pick someone up. During this conversation, the detective on the passenger's side motioned to the other and told him he could see a plastic bag in the center console. The officer speaking to the Defendant/driver shined his flashlight into the center console where he could see, in plain view, a plastic bag with a bullet inside which he described as "the largest pistol round" he had ever seen.

Upon seeing the bullet, the officer ordered the Defendant and the two passengers out of the vehicle, handcuffed them all, and conducted a pat-down of all 3. They discovering another bullet in the Defendant's front pants pocket that matched the other 5 found in the plastic bag in the console. After finding 6 bullets, the officer believed there may be a gun in the car and they began searching the interior, finding a .454 revolver under a floor mat on the front passenger side. All three occupants were arrested.

The Defendant's motion to suppress argued police lacked probable cause to remove them from the vehicle, patting them down and searching the vehicle because possession of a bullet is not *per se* illegal & without asking if the Defendant possessed a valid FOID card, the police had no way to know whether its possession was legal or not. The Defendant also contended he was subjected to an unlawful arrest without probable cause when he was ordered out of the vehicle, and handcuffed.

Scenario # 7 – Search Warrants

Drug task force agents intercepted a suspicious Fed Ex package shipped priority overnight from California with no signature required on receipt. The package was addressed to S. Harris, at an address in Lincolnwood, IL. After a "hit" by a drug K-9 a search warrant was obtained to open the package. 4 heat-sealed plastic bundles were found inside which tested positive for cannabis.

The agents obtained an anticipatory search warrant to search: "S. Harris or anyone taking possession of the Fed Ex Priority Overnight Parcel ... and to enter and search 6629 N. Kolmar Ave ...or any premises or vehicle that the Fed Ex Parcel ... is brought into once the parcel has been delivered by law enforcement personnel ..."

The complaint for the search warrant said it search warrant would only be executed if the parcel was *accepted* into a location or vehicle. The agents also obtained an order to install an electronic monitoring and breakaway filament device in the package so they could track it

and determine whenever it was moved or opened. This information was not included in the search warrant.

Once repackaged, the parcel was delivered to the address and left on the front porch when no one answered the door. Within an hour the surveilling agents saw the Defendant arrive, pull into the driveway, exit his running vehicle, retrieve the package and place it into the back seat of the car.

The agents decided to execute the warrant at that time although there had been no indication it had been opened. They approached the vehicle, arrested the Defendant and retrieved the package. After being Mirandized, the Defendant admitted his knowledge of the contents of the package.

The Motion to Suppress contended there was no probable cause for his arrest and search without the “triggering event” of opening the package. The State contends the triggering event was the delivery of the package. Alternatively, they contend the “good faith exception” should apply.

Scenario #8 – Warrantless Entry

A confidential informant (CI) arranges to make a controlled buy from the Defendant at a specific date, time & location. The Defendant then tells the CI that his shipment didn’t arrive and he would contact him when it did. As a result, the police have no location, date or time to anticipate the delivery occurring.

The Defendant contacts the CI telling him to meet him at his place of business. Once there, the Defendant has the CI drive him to the Defendant’s residence. Surveilling agents are following them throughout this time. When the CI and Defendant get to the residence, the Defendant shows the CI a large quantity of cocaine and they discuss a price for a portion of it.

The Defendant refuses to conduct the sale outside of his residence and the CI, saying he had to contact his buyer, leaves the building and informs the police the Defendant will not come out. The agents enter; kicking in a locked door and arrest the Defendant and seizing the cocaine from the very location described by the informant.

No search warrant was sought or obtained since the agents had no information regarding when, where or how the delivery was to occur prior to the Defendant contacting the CI. Once contact was made, there was no time to seek a warrant before the meeting was to take place.

The Defendant contends the agents should have obtained a search warrant and since they made a warrantless entry and search, the evidence was subject to suppression.

The State says there was no time for a warrant, no basis for an anticipatory warrant and exigent circumstances applied.

Scenario#9 – DUI

The Defendant was driving southbound on I-294 and struck another vehicle causing a crash which resulted in the death of one of the other driver. Members of the Illinois State Police responded and conducted an initial investigation of the incident, including interviewing the Defendant who remained at the scene during the investigation.

Subsequent to the investigation at the scene, a trooper took the Defendant into custody within 2 hours and transported him to a local hospital for purposes of blood and urine draws.

The Defendant did not show any visible signs of impairment and never consented to any chemical testing. The Defendant's driving privileges were not suspended or revoked at the time of the accident. The trooper did not obtain a search warrant for the blood or urine to be collected.

The Defendant was issued 3 Uniform Traffic Citations: Failure to Reduce Speed to Avoid an Accident, Operating a Motor Vehicle Without Insurance, and Operating a Motor Vehicle Without Valid State Registration.

The lab results later revealed the presence of alcohol (.18) and cocaine. The Defendant was then charged with Reckless Homicide and Aggravated DUI.

Scenario #10 – DUI

Same set of facts as above except: The trooper does not demand the blood or urine samples until 2 days after the accident because of additional information obtained during the investigation.

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Once repackaged, the parcel was delivered to the address and left on the front porch when no one answered the door. Within an hour the surveilling agents saw the Defendant arrive, pull into the driveway, exit his running vehicle, retrieve the package and place it into the back seat of the car.

The agents decided to execute the warrant at that time although there had been no indication it had been opened. They approached the vehicle, arrested the Defendant and retrieved the package. After being Mirandized, the Defendant admitted his knowledge of the contents of the package.

The Motion to Suppress contended there was no probable cause for his arrest and search without the “triggering event” of opening the package. The State contends the triggering event was the delivery of the package. Alternatively, they contend the “good faith exception” should apply.

Scenario #8 – Warrantless Entry

A confidential informant (CI) arranges to make a controlled buy from the Defendant at a specific date, time & location. The Defendant then tells the CI that his shipment didn’t arrive and he would contact him when it did. As a result, the police have no location, date or time to anticipate the delivery occurring.

The Defendant contacts the CI telling him to meet him at his place of business. Once there, the Defendant has the CI drive him to the Defendant’s residence. Surveilling agents are following them throughout this time. When the CI and Defendant get to the residence, the Defendant shows the CI a large quantity of cocaine and they discuss a price for a portion of it.

The Defendant refuses to conduct the sale outside of his residence and the CI, saying he had to contact his buyer, leaves the building and informs the police the Defendant will not come out. The agents enter; kicking in a locked door and arrest the Defendant and seizing the cocaine from the very location described by the informant.

No search warrant was sought or obtained since the agents had no information regarding when, where or how the delivery was to occur prior to the Defendant contacting the CI. Once contact was made, there was no time to seek a warrant before the meeting was to take place.

The Defendant contends the agents should have obtained a search warrant and since they made a warrantless entry and search, the evidence was subject to suppression.

The State says there was no time for a warrant, no basis for an anticipatory warrant and exigent circumstances applied.

Scenario#9 – DUI

The Defendant was driving southbound on I-294 and struck another vehicle causing a crash which resulted in the death of one of the other driver. Members of the Illinois State Police responded and conducted an initial investigation of the incident, including interviewing the Defendant who remained at the scene during the investigation.

Subsequent to the investigation at the scene, a trooper took the Defendant into custody within 2 hours and transported him to a local hospital for purposes of blood and urine draws.

The Defendant did not show any visible signs of impairment and never consented to any chemical testing. The Defendant's driving privileges were not suspended or revoked at the time of the accident. The trooper did not obtain a search warrant for the blood or urine to be collected.

The Defendant was issued 3 Uniform Traffic Citations: Failure to Reduce Speed to Avoid an Accident, Operating a Motor Vehicle Without Insurance, and Operating a Motor Vehicle Without Valid State Registration.

The lab results later revealed the presence of alcohol (.18) and cocaine. The Defendant was then charged with Reckless Homicide and Aggravated DUI.

Scenario #10 – DUI

Same set of facts as above except: The trooper does not demand the blood or urine samples until 2 days after the accident because of additional information obtained during the investigation.